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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FRANK JOSEPH CARDERELLA,) CASE NO. CV 09-8299 R (MANx)
Plaintiff,)
vs.)
JANET NAPOLITANO, as Secretary) DECLARATION OF JOHN A.
of the Department of Homeland) STILLMAN IN SUPPORT OF
Security) PLAINTIFF'S MOTION FOR ORDER
Defendant.) IMPOSING ISSUE-RELATED AND
) EVIDENTIARY SANCTIONS
) AGAINST DEFENDANT
)
) Date: October 12, 2010
) Time: 10:00 a.m.
) Ctrm: Spring Street Courthouse
) 312 North Spring Street, Ctrm 8
) Los Angeles, California 90012
)
) Trial Date: October 19, 2010
) Time: 9:00 a.m.
) Ctrm: Spring Street Courthouse
) 312 North Spring Street, Ctrm 8
) Los Angeles, California 90012
)
) Honorable Manuel L. Real
)
)

1. I, John A. Stillman, am an attorney duly licensed to practice law before the U.S. District Court for the Central District of California and a partner with Good Wildman Hegness & Walley, the attorneys of record for the Plaintiff in the above-referenced matter. I have personal knowledge of the facts stated herein and if called as a witness, I could and would testify competently thereto. This declaration is made in support of Plaintiff's Motion for Order Imposing Issue-Related/Evidentiary Sanctions Against Defendant.

2. On August 27, 2010, I took the deposition of Kamala Hampton, a current employee of Homeland Security and a former employee of the Immigration and Naturalization Service (“INS”) where she held the position of Human Resource Specialist from 1990 through 2005. It was during this time period, in 1996, that the Plaintiff herein applied for a vacant Detention Enforcement Officer position and was not selected despite his qualifications for the same.

3. Attached hereto are true and correct excerpts of the relevant portions of Ms. Hampton's deposition testimony taken from the transcript which establish that (1) the INS had a policy which required the preservation of records and files upon receiving notice of a claim for discrimination relating to the same and (2) the portion of the application for an INS position reflecting an applicant's race, national origin, sex and religion was customarily retained in the applicant's file.

4. Plaintiff will lodge a certified copy of Ms. Hampton's deposition with the court prior to the hearing on this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 10th of September of 2010.

JOHN A. STILLMAN

U.S. DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

**CERTIFIED
COPY**

DEPOSITION OF: KAMALA HAMPTON

Newport Beach, California
Friday, August 27, 2010

Reporter: Marlene Apodaca, CSR No. 6579

Newport Beach, California

Friday, August 27, 2010

10:05 a.m.

* * *

KAMALA HAMPTON,

7 having been first duly sworn by the Certified Shorthand
8 Reporter, was examined and testified as follows:

BY MR. STILLMAN:

11 Q Would you state your name and spell it for the
12 record, please?

13 A My name is Kamala, K-a-m-a-l-a, Hampton,
14 H-a-m-p-t-o-n.

15 Q Ms. Hampton, my name is John Stillman, and I'm
16 an attorney, and I am representing a man named
17 Frank Carderella.

18 Frank Carderella has filed a lawsuit against
19 Janet Napolitano, as the Head of Department of Homeland
20 Security. The reason he has sued Janet Napolitano is the
21 law says you can't sue like the Immigration Department.
22 You have to sue the secretary of the office, under
23 Federal Law. So even though Janet Napolitano I'm sure
24 knows nothing about this case, she is a defendant in this
25 case; and we are taking your deposition today to find out

1 A I work at the Los Angeles Cargo Building on
2 La Cienega Boulevard in Los Angeles.

3 Q And is that a government building, or is that a
4 building where they just rent office space?

5 A A building where they rent office space.

6 Q Okay. And you said you started at that site in
7 January of 2005.

8 Did you start also as a mission support
9 specialist at that time also?

10 A Yes.

11 Q Okay. And what was your job -- strike that.

12 When did you first go to work for the U.S.
13 Government?

14 A In approximately March of 1987.

15 Q And have you been employed by the
16 U.S. Government continually since then?

17 A Yes, I have.

18 Q Just prior to January of 2005, when you began
19 working as a mission support specialist at the La Cienega
20 location, what was your position with the
21 U.S. Government?

22 A I was a human resources specialist.

23 Q And by whom were you employed at that point?

24 A Prior to the merger, I was under the Department
25 of Justice, U.S. Immigration and Naturalization Service.

1 Q INS?

2 A Yes.

3 Q When you said "prior to the merger", that was
4 the merger of Immigration and Customs?

5 A Yes.

6 Q And the formation of ICE?

7 A Well, Department of Homeland Security, which
8 included ICE, CBP and CIS, and other agencies.

9 Q Okay. What do all those letters stand for?

10 A ICE is Immigration and Customs Enforcement.

11 CBP is Customs and Border Protection.

12 CIS is Citizenship and Immigration Services.

13 They are considered different bureaus.

14 Q Within the Department of Homeland Security?

15 A Correct.

16 Q So when you went to work for Customs and Border
17 Protection in January of 2005, just prior to that you had
18 been working for INS?

19 A Prior to that, I was working for INS.

20 And then at about that time they were doing the
21 reorganization, in about the middle or the end of 2004;
22 and our titles were changed from human resources
23 specialist to mission support specialist.

24 And at that time Department of Homeland Security
25 was doing a reorganization. And by the end of 2004, our

1 A It's the listing those persons that meet all of
2 the qualification requirements and who will be referred
3 to the program for their consideration.

4 Q And is this basically just a list?

5 A Yes.

6 Q And what do you do with that list?

7 A I type up the list.

8 Q No. I mean after you've typed it up.

9 Do you give it to somebody?

10 A Yes, with the applications.

11 Q With the applications?

12 A Yes.

13 Q So you give a list of a number of names of
14 everybody that qualified on paper, along with their
15 applications.

16 And who would you give that list to?

17 A Whoever is designated as my contact point in the
18 program.

19 I need to backtrack, because there is one form
20 that we request in the announcement, but we remove it.

21 It was the race and nationality form. It was removed.

22 We remove it. We don't forward that form.

23 Q Can you explain what you mean? What is a race
24 and nationality form?

25 A It's a form used for EEO purposes, that we were

1 told to basically put in the vacancy announcement. It's
2 listed as a form, and it's an optional form. But we
3 always would go through the vacancy announcement. So if
4 it's in that application, in the person's application, we
5 remove it.

6 Q Now, is this a form that is part of the
7 application, or is it a question on the application?

8 A It's just a -- it's the form that has questions
9 about, you know, race and national origin.

10 Q Okay. And when you say you remove it, how do
11 you actually remove it?

12 A I -- either myself or my assistant in the
13 personnel office, we remove it.

14 Q But is it a separate sheet of paper, or do you
15 have to --

16 A No. It's a separate sheet of paper.

17 Q Okay. And so after the applications come back,
18 you just take that part of the application. And what do
19 you do with that part of the applications?

20 A Just hold it in the file.

21 Q You do hold it in the file?

22 A Yes.

23 Q But it does not go any further than the
24 department, than your department?

25 A Correct.

1 Q And when you would maintain it, would you
2 maintain it at your offices, or would you send it to some
3 storage facility somewhere?

4 A We had a storage area in the basement.

5 Q And did you have any process, if somebody
6 objected in some way or filed some sort of a grievance,
7 with regard to the hiring process as to handling this
8 merit promotion file in a different way?

9 A Could you restate that?

10 Q It looks like you don't understand the question.

11 A Yes. I'm sorry.

12 Q No. That's okay. Probably my fault.

13 Once this merit promotion file was put together
14 after people had received their jobs, and it was put into
15 a filing cabinet or a box, or however you kept it
16 somewhere, if one of the people who did not get the job
17 filed any kind of an appeal or a complaint or a
18 grievance, whatever the process was with regard to
19 that, was there any effort made at that point to make
20 sure that the merit promotion file was kept, at least
21 until in a grievance or appeal or whatever it is had been
22 finally resolved?

23 A Yes. If we have the file, we would pull the
24 file.

25 Sometimes the applicant who wasn't selected may

1 go through FOIA, Freedom of Information or public
2 information, to obtain, you know, documentation or
3 information as to why they were not selected.

4 If an EEO complaint was filed or a grievance was
5 filed, we'd pull the file and sit with whomever, while
6 they review the file.

7 Q Okay. And once the file has been pulled because
8 something like that is going on, would there be any
9 effort or any process by which they determined to keep
10 that file until this appeal process or whatever it is was
11 finished, as opposed to destroying the file under the
12 regular file retention schedule?

13 A Well, it depends on the time frame between when
14 the person files, and if we have the file. Some of them
15 we -- if the person -- if we get a large grievance, and
16 it's within like a certain time frame, we just retain the
17 file.

18 Q Okay.

19 A We retain it.

20 Q Were you aware in 1995 that when
21 Mr. Carderella -- do you recall -- and it would surprise
22 me if you did, but would you recall if Mr. Carderella did
23 or did not get the position as a detention enforcement
24 officer in 1995, when he applied for it?

25 A No, I do not recall.